

Revision: **HCFA-PM-95-3 (MB)**
May 1995

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STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT

State/Territory: OREGON

LIENS AND ADJUSTMENTS OR RECOVERIES

1. **The State uses the following process for determining that an institutionalized individual cannot reasonably be expected to be discharged from the medical institution and return home:**

The State does not identify permanently institutionalized individuals for purposes of estate recovery.

2. **The following criteria are used for establishing that a permanently institutionalized individual's son or daughter provided care as specified under regulations at 42 CFR §433.36(f):**

N/A

3. **The State defines the terms below as follows:**

- **ESTATE:** For medical assistance provided "prior" to July 18, 1995, *estate* is defined as all real and personal property and other assets included within the individual's probatable estate. For medical assistance provided after July 18, 1995, *estate* also includes all real and personal property and other assets in which the deceased individual had any legal title or interest at the time of death including assets conveyed to a survivor, heir, or assign of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other similar arrangement.
- **INDIVIDUAL'S HOME** means any dwelling unit in which an individual has an ownership interest and is used as the individual's principal place of residence; such dwelling unit may consist of a house, boat, trailer, mobile home or other habitation. It is the dwelling that the individual considers his or her fixed or permanent residence and to which, whenever absent, the person intends to return. The individual's home includes the real property on which the dwelling is located, all tangible personal property located therein, and any related outbuildings necessary to its operation. Only one dwelling unit may be considered an individual's home. Outbuildings necessary to the operation of the home include

TN No. 95-010
Supersedes —
TN No. —

Approval Date 12/18/95 Effective Date 7/18/95

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outdoor toilets, garage, shed, spring or well house, and barns or other buildings that house animals used for the individual's consumption. An individual's home, in most instances, is located within the state of Oregon. However, an individual's home may be located outside the state of Oregon.

- **EQUITY INTEREST IN THE HOME** means the value of an individual's home less the unpaid principal balance of any loans or other liens or encumbrance affecting the individual's home.
- **RESIDING IN THE HOME FOR AT LEAST ONE OR TWO YEARS ON A CONTINUOUS BASIS** means uninterrupted residence by an individual in the individual's home, provided, however, that such residence may be interrupted by absences from the home if, while absent, the individual has the intent to return home.
- **LAWFULLY RESIDING** means that an individual has a legal right to reside in an individual's home.

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4. The State defines undue hardship as follows:

The Division may waive enforcement of any estate recovery claim if it finds that enforcing the claim would result in an undue hardship to the beneficiaries, heirs, or family claiming entitlement to receive the assets of the deceased client. In determining whether an undue hardship exists, the Division may consider whether enforcement of the claim would cause the waiver applicant to become eligible for public or medical assistance or become homeless. (ORS 416.340)

5. The following standards and procedures are used by the State for waiving estate recoveries when recovery would cause an undue hardship, and when recovery is not cost-effective:

At the discretion of the Division, waiver of an estate recovery claim may include, but is not limited to, forgiveness of all or part of the claim or taking a mortgage or trust deed in lieu of enforcement of the claim.

No waiver may be granted if the Division finds that the undue hardship was created by resort to estate planning methods by which the waiver applicant or deceased client divested, transferred, or otherwise encumbered assets, in whole or in part, to avoid estate recovery.

No waiver will be granted if the Division finds that the undue hardship will not be remedied by the grant of the waiver.

The Division will provide written notice of the hardship waiver rules to the personal representative or other person handling the deceased client's estate, and other persons as described in the Division's rules.

Persons claiming entitlement to receive assets may apply for a hardship waiver by submitting a written request to the Division. The information to be included on the request is specified in the Division's rules.

DHR MAP 0055755

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6. The State defines cost-effective as follows (include methodology/thresholds used to determine cost-effectiveness):

Each Estate Administrator has the authority to determine if an estate will be pursued for collection based on the following criteria: value of the claim as it compares to the unit recovery per hour. A \$500.00 claim will not be pursued if the initial contact with the personal representative does not solicit a response which requires no more than the claim letter or a telephone call to explain our priority as a creditor in the estate; or likelihood of prevailing if the claim is challenged legally; likelihood of collecting the full value of the claim (cost in terms of the legal fees and staff time to pursue the claim).

7. The State uses the following collection procedures (include specific elements contained in the advance notice requirement, the method for applying for a waiver, hearing and appeals procedures, and time frames involved):

Upon the death of a recipient of assistance subject to recovery, and provided the recipient has no surviving spouse, minor child, or a child who is blind or disabled according to SSI criteria, and provided there is no real property or titled personal property which would require the filing of an estate proceeding, (small estate or probate), the Division may claim any funds up to \$15,000 which belonged to the recipient and which are on deposit with a bank (ORS 708.520), savings and loan (ORS 722.262), or credit union (ORS 723.463).

When the Estate Administrator receives a report on deceased persons meeting the conditions above, the Estate Administrator sends the banking letter, an affidavit, and indemnity agreement to the identified financial institution claiming the account of the decedent. Individuals who contact us and notify us of creditors who have a priority before the State are advised to send the billings to the Estate Administrator and the bill is satisfied to the extent that the assets are available, i.e., funeral expenses.

A small estate is required when an individual dies leaving an estate with a fair market value of \$140,000.00 or less; not more than \$50,000.00 attributable to personal property and not more than \$90,000.00 attributable to real property. An affidavit may not be filed until 30 days after the death of the decedent. A probate proceeding can be filed at any time and would exceed the dollar amounts identified earlier associated with the filing of a small estate.

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If, after sufficient passage of time, neither the heirs nor devisees have filed an estate proceeding, then the Division handling the estate, under the authority of Oregon revised statutes, has the authority to act as the personal representative or nominate a personal representative. The practice of Estate Administration is to nominate a personal representative.

In both situations, the Estate Administration Unit files the written notice with the probate court of our claim as a priority creditor. The heirs or the personal representative has the right to deny the claim. The case then may be subject to the undue hardship provisions (please refer to the hardship criteria and procedures described above) or the claim can be denied and a summary determination will occur in Probate Court.

TN No. 95-010
Supersedes
TN No.

Approval Date 12/18/95

Effective Date 2/18/95